

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

H. LEIGHTON LASKEY,)
)
)
Plaintiff,)
)
)
v.) C.A. No. 06-018-JJF
)
)
PFC. ROBERT C. LEGATES,)
PFC. WHEATLEY and JOHN DOE,)
Supervisor on duty at)
Millsboro Police Department,)
)
Defendants.)

REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S "AMENDMENT"
AND "AMENDED COMPLAINT"

1. Plaintiff's "Objection to Defense Request to Dismiss" asserts that under Delaware law force can be used to obtain a chemical test in a DUI case "only...if vehicular manslaughter or injury occurs during a DWI." Plaintiff cites no authority for this assertion. In fact there is no requirement that vehicular manslaughter or injury occur before a officer may use reasonable force to obtain a chemical test. McCann v. State of Delaware, 588 A.2d 1100, 1101 (Del. Supr. 1991) (If the officer does not inform a DUI suspect of the penalty of revocation for refusal, reasonable force may be used to take a blood sample from a suspected drunk driver).

WHEREFORE, for the reasons set forth herein and in Defendants' Memorandum of Points and Authorities in Support of their Motion to Dismiss Plaintiff's "Amendment" and "Amended

Complaint", defendants request that Plaintiff's Amended Complaint be dismissed with prejudice for failure to state a claim upon which relief can be granted.

AKIN & HERRON, P.A.

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Dated: August 15, 2006

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